



IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE


APPLICANT: Cynthia Donovan et. al.
SERIAL NO: 09/578,672
FILING DATE: 5/25/2000
TITLE: METHOD AND APPARATUS FOR CONTROLLING ACCESS TO A WEBSITE
GROUP ART UNIT: 2445
ATTY DOCKET NO: 1112
EXAMINER Mirza, Adnan

CERTIFICATION OF MAILING

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Denisa Marcisovska

THE HONORABLE COMMISSIONER OF PATENTS, ALEXANDRIA, VA 22313

APPEAL BRIEF UNDER 37 C.F.R. 1.192

SIR:

In support of the appeal of the above-referenced case:

1. Real Party in Interest.

The real party in interest is Charles Schwab & Co.,
Inc.

2. Related Appeals and Interferences.

5 Prosecution was reopened following receipt of
Applicants' prior two appeal briefs. Prosecution has been
reopened a third time. There are no other related appeals
and interferences.

3. Status of Claims.

10 All claims are rejected. Claims 1-31 are rejected and
are the only claims in the case. Claim 1 is rejected.
Claim 2 is rejected. Claim 3 is rejected. Claim 4 is
rejected. Claim 5 is rejected. Claim 6 is rejected.
Claim 7 is rejected. Claim 8 is rejected. Claim 9 is
15 rejected. Claim 10 is rejected. Claim 11 is rejected.
Claim 12 is rejected. Claim 13 is rejected. Claim 14 is
rejected. Claim 15 is rejected. Claim 16 is rejected.
Claim 17 is rejected. Claim 18 is rejected. Claim 19 is
rejected. Claim 20 is rejected. Claim 21 is rejected.
20 Claim 22 is rejected. Claim 23 is rejected. Claim 24 is
rejected. Claim 25 is rejected. Claim 26 is rejected.
Claim 27 is rejected. Claim 28 is rejected. Claim 29 is
rejected. Claim 30 is rejected. Claim 31 is rejected. No

claim is not rejected. The entirety of the claims are rejected. Every single claim is rejected. There are no other claims, except for the ones that are rejected.

Claims 1, 14, and 27 are being appealed after
5 prosecution was reopened and an office action was issued following receipt of Applicants' prior appeal briefs. Claims 1 and 14 stand or fall together. Claim 27 stands on its own.

4. Status of Amendments.

10 Amendments A-E were filed and entered in the application.

5. Summary of Claimed Subject Matter.

Claim 1 recites, "A method of processing a first request for web page, comprising:"

15 "receiving the first request for the web page; and"
(page 39, line 18)

"transmitting, to a device from which the first request was received, at least one command to send a second request for the web page, and a first timestamp."
20 (page 41, lines 3-11)

Claim 14 recites, "A computer program product comprising a computer useable medium having computer

readable program code embodied therein" (page 9, lines 2-4) "for processing a first request for web page, the computer program product comprising:"

"computer readable program code devices" (page 9, lines 2-4) "configured to cause a computer to receive the first request for the web page; and" (page 39, line 18)

"computer readable program code devices" (page 9, lines 2-4) "configured to cause a computer to transmit, to a device from which the first request was received, at least one command to send a second request for the web page, and a first timestamp." (page 41, lines 3-11)

Claim 27 recites, "An apparatus for processing a first request for a web page, the apparatus comprising:"

"a user request router having an input coupled to an apparatus input operatively coupled for receiving the first request," (page 15, lines 16-18; page 16, lines 6-8) "the user request router for providing at an output a signal responsive to the first request received at the user request router input; and" (page 20, lines 15-16)

"a cookie/applet generator having an input coupled to the user request router output for receiving the signal," (page 20, lines 15-16) "the cookie/applet generator for providing, to a device from which the first request was

received, via a first output coupled to an apparatus output, a first indicator of at least one time to send a second request for the web page." (page 20, lines 16-23; page 18, lines 1-12)

5 6. Grounds of Rejection to be Reviewed on Appeal.

Examiner rejects claims 1, 14, and 27 under 35 U.S.C. 103(a) as being unpatentable over Sandhu (U.S. Patent 6,985,953) and Devine (U.S. Patent 6,606,708).

7. Argument.

10 In almost ten years of prosecution, Examiner has been searching, but not finding, the claimed feature "transmitting, to a device from which the first request was received, at least one command to send a second request for the web page, and a first timestamp".

15 To determine obviousness, an Examiner is to identify the scope and content of the prior art, identify any differences, and the level of skill in the art, and then use one of the rationales to determine whether the claimed invention is obvious. "Examination Guidelines for
20 Determining Obviousness Under 35 U.S.C. 103 In View of the Supreme Court Decision in KSR International Co. v. Teleflex, Inc." (72 Fed. Reg. 57526); KSR International Co. v. Teleflex Inc., 127 S.Ct. 1727, 550 U.S. 398 (2007).

In the official action mailed 12/8/09, in the crossover paragraph of pages 2-3, Examiner attempts to show the above-referenced feature is obvious using a reference, Devine, which allows a server to determine when a client is no longer in communication with the server. To perform this function, Devine addresses that the client repeatedly sends messages to the server and the server maintains at the server the last time such a message was received at the server. If the client fails to communicate for a threshold period of time, because the server timestamps the last time the client communicated with the server, and because that information is retained at the server, the server can determine that the client is no longer in communication with the server and can terminate the overhead the server maintains for potential communication with the client. (Devine, column 21, lines 16-35).

A. None of the References Sends a Command To a Computer From Which a Request For a Web Page has Been Received To Send Another Request For The Web Page As Claimed.

Examiner doesn't appear to assert that the Devine reference discloses sending to a computer from which a request for a web page was received, a command to send a

second request for the web page as claimed. There is no rationale for sending it nor any discussion that it could even be sent. There is no discussion of it at all.

5 The closest Examiner ever gets to asserting that the feature is shown is in the middle of the bolded section at the top of page 3 when Examiner states "when the same client sends a second request containing the session key". However, Devine never sends a second request for a web page, it merely sends a heartbeat transaction.

10 Column 19, lines 30-48 of Devine describe the heartbeat transaction communication that is used to indicate the client remains in communication with the server, but there is no request for a web page. The same portion describes the response sent by the server, but in
15 that response, there is no command to request a web page already requested as claimed. Because the heartbeat response is never described as a command to send a request for a web page as noted, it is unclear where Examiner feels this claimed feature is shown or why it would ever be used
20 by Devine.

At the second to the last paragraph of page 2 of the 12/08/2009 Official Action, Examiner admits that the Sandhu reference does not disclose this feature either.

Thus, the feature is not disclosed in either reference.

B. One Skilled in the Art Would Not Find Sending the Timestamp to the Client Machine Obvious By Reading Devine.

5 Near the top of page 3 of the 12/8/09 Office Action, Examiner asserts that one skilled in the art at the time the invention was made would know that the session key contains a timestamp and the session key can be predefined for a certain period of time. Examiner did not address
10 where the session key is described in Devine at all, but Applicants assume Examiner is referring to the crossover paragraph between columns 20 and 21 of Devine.

Examiner goes on to assert, at page 3, lines 4-8 of the 12/8/09 Official Action (with clarifications added in
15 brackets), that when the client sends a second request containing the session key, it will check for the expiration [of the] time stamp [and] as long as the time stamp is valid and not expired[,] the server processes the second request[;] otherwise it clears the request.

20 However, Examiner has provided absolutely no support for this assertion in any reference, and none was located in the Devine reference. Examiner doesn't state why Devine would need to request a web page already requested nor why

the timestamp would be required from the server, instead of the client just timestamping its own request. Nor does Examiner identify what "it" is, in his statement that "it" will check for the expiration time stamp.

5 In contrast to Examiner's assertion, the Devine reference addresses the ability to detect if the client's connection to the server has been interrupted. As noted, Devine does this by sending messages from the client to the server and recording at the server the last time such a
10 message was received. Not only is there no need for the session key to contain any timestamp, as Devine's cookie jar service at the server is keeping track of the relevant times, but if Devine had sent the timestamp to the client requesting the web page instead of keeping it behind the
15 server, when communications between the client and the server were interrupted, Devine's server wouldn't have the information necessary to allow Devine to perform its intended purpose: to identify a loss of communication between the client and server. One skilled in the art
20 after reading Devine would keep the timestamp on the server, as Devine in fact actually does, because its purpose is to allow the server to detect a lack of communication with the client when the difference between the timestamp of the last communication received from a

client and the current time exceeds a threshold amount of time. To do that, it needs to be on the server.

Sending the timestamp to a device from which a first request for a web page was received as claimed, instead of
5 keeping it on the server as is performed in Devine would make it impossible for Devine's server to perform its intended function of detecting that the client is no longer in communication with the server, because the server would have no way of retrieving the timestamp when such
10 communications were interrupted.

Examiner notes at the top of page 3 of the 12/08/2009 Official Action in the bolded section that the client could use the timestamp, but never provides any rationale as to why the client would actually do this. The whole purpose
15 behind the Devine reference is that the server wants to hear from the client constantly: Examiner's proposal instead has the client restricting its communications with the server.

That is not the case in the other direction, from the
20 server to the client. Not only is there no reason to unnecessarily communicate a timestamp from the server to the client, Devine provides a good reason not to. Devine provides an accurate description of the state of Web

communication at the time the invention was made: mostly
dial up users using relatively slow modems. (Devine, Col.
1, lines 20-34). No one skilled in the art at the time the
invention was made would have sent the timestamp to the
5 client making the request for the web page when such
sending served no purpose because it would have adversely
affected the bandwidth between the client and the server,
which was in short supply at the time of Devine and at the
time the invention was made. If a timestamp was desired,
10 it would have been obtained at the client itself.

C. There is No Legitimate Rationale For Showing the
Invention Is Obvious.

Although a rationale is expected by the guidelines and
KSR, Examiner provides no rationale for the claimed feature
15 at all. At page 3 of the 12/8/09 office action, in the
last two lines of section 2, Examiner makes what appears to
be an attempt at providing a generic rationale, but
Examiner never explains why the server would need to send
the timestamp or a command. If cost was an issue as
20 Examiner asserts, the client could have obtained the
timestamp Examiner proposes from its own system clock
without any network cost.

D. Conclusion.

There is therefore nothing but impermissible hindsight reconstruction of Applicants' invention that would lead one skilled in the art to add the claimed timestamp to the session key.

5 Applicants are perplexed by Examiner's strategy of repeatedly reopening prosecution after numerous appeal briefs. This application was filed nearly ten years ago. Had it been allowed, it would have been published, making its teachings publicly available for others to build upon
10 and would be half way through its twenty year term. Instead, it has been rejected and rerejected, yet on every appeal, the rejections are deemed moot, only to have the process repeated again using different art. A huge term adjustment will keep this patent in force for many years
15 after it would have expired, had it just been allowed when it was clear that it was novel and not obvious.

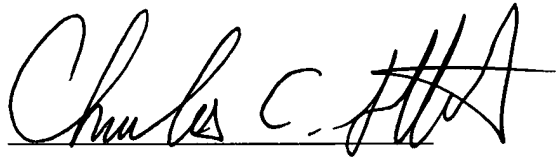
Nearly every other patent that was pending at the time this application was filed has been allowed or abandoned, so it is unlikely that any additional references will come
20 to light. Applicants urge the Patent Office to issue a patent to these inventors who are deserving of such protection for their invention. As the record shows, it really was novel and not obvious at the time it was made,

and Applicants hope that after all the opportunities the
Patent Office has had to show otherwise without success,
the patent can be allowed to issue.

Claims 1, 14, and 27 are patentably distinguishable
5 over the cited references. Favorable action is solicited.

Respectfully Submitted

May 7, 2010.

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Charles Gottlieb

Reg. No. 38,164

Innovation Partners

540 University Ave.

15

Suite 300

Palo Alto, CA 94301

8. Claims Appendix.

1. A method of processing a first request for web page, comprising:

receiving the first request for the web page; and

transmitting, to a device from which the first request
5 was received, at least one command to send a second request for the web page, and a first timestamp.

14. A computer program product comprising a computer useable medium having computer readable program code embodied therein for processing a first request for web page, the computer program product comprising:

5 computer readable program code devices configured to cause a computer to receive the first request for the web page; and

computer readable program code devices configured to cause a computer to transmit, to a device from which the
10 first request was received, at least one command to send a second request for the web page, and a first timestamp.

27. An apparatus for processing a first request for a web page, the apparatus comprising:

a user request router having an input coupled to an apparatus input operatively coupled for receiving the first

5 request, the user request router for providing at an output
a signal responsive to the first request received at the
user request router input; and

a cookie/applet generator having an input coupled to
the user request router output for receiving the signal,
10 the cookie/applet generator for providing, to a device from
which the first request was received, via a first output
coupled to an apparatus output, a first indicator of at
least one time to send a second request for the web page.

9. Evidence Appendix.

15 No evidence appendix is being submitted.

10. Related Proceedings Appendix.

All appeals in this case were interrupted by reopened prosecution, and therefore Applicants are not submitting a related proceedings appendix.